(22)

IN THE

Supreme Court of the United States

OCTOBER TERM, 1944

NO. 677

WILLIAM FRASER, Petitioner

VS.

UNITED STATES OF AMERICA, Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS, SIXTH CIRCUIT.

WILS DAVIS,
Memphis, Tennessee
Attorney for Petitioner

W. H. FISHER,
W. C. RODGERS,
Memphis, Tennessee
Of Counsel.

THE DAILY NEWS

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Petitioner, William Fraser, prays this Court to review on Writ of Certiorari a judgment of the United States Circuit Court of Appeals for the Sixth Circuit, in a case there entitled, William Fraser, Appellant, vs. United States of America, Appellee.

The Circuit Court of Appeals filed its Opinion on

Oct. 10, and on the same date entered an order reversing the judgment of the United States District Court for the Western District of Tennessee, at Memphis, as to Counts 1 and 4 of the Indictment, and affirming said Court as to Count 3 of the Indictment, and remanding for correction of judgment in accordance.

Petitioner was tried on Oct. 14, 1943, in the United States District Court at Memphis on an Indictment of four counts, changing perjury based on Sec. 125 of the Criminal Code, (18 USCA 251). By direction of the Court the jury returned a verdict of not guilty on Count 2; and as to the other Counts the verdict was guilty on each one. R. p. 22.

Oct. 22, 1943, the District Court rendered judgment imposing a sentence of Five years imprisonment on each of Counts 1, 3, and 4, to run concurrently; and also a fine of $2000.00 on each of said Counts, and to pay the costs. R. pp. 31-33.

This judgment overruled Petitioner's Motion for New Trial, which contained the following grounds, to-wit:

V

First:

"The Court erred in failing and refusing to charge the defendant's special instruction No. II, in words and figures as follows, to-wit:

" You are instructed that you cannot convict the defendant on the uncorroborated statement of any one witness. A conviction of perjury must be based upon testimony of two or more witnesses, or if only by one witness, then such witness must be corroborated by other substantial evidence."

because this was, and is, the law applicable to this case, and was vital and necessary to the proper guidance of the jury, in consideration of the issues submitted to them."

Motion for New Trial R. pp. 23-30, at p. 26.
Special Request for Instruction No. II, R. p. 459.

Petitioner on Oct. 25, 1943, filed his Petition for appeal to the Circuit Court of Appeals, and assigned among other grounds this item V of his Motion for New Trial.

Petition for Appeal R. pp. 35-42 at p. 38.

The Court of Appeals held the refusal of the Trial Court to give this specially requested instruction to the Jury was erroneous, and on this ground reversed the District Court on Counts 1, and 4 of the Indictment; but as to Count 3, held that the error was not prejudicial, in the following language, to-wit:

"As to Count 3, the evidence consisted of; the stipulation that the mortgage had in fact been paid, Fraser's admission that he did pay it off and corroborative testimony of the two bankers with supporting documents, tending to show that a checking transaction between Fraser and the lien holder for the amount of the mortgage had cleared through the banks on the day stated. We think the evidence as to this count, consisting as it did of Fraser's admission or confession and the corroborative testimony of the bankers was such that it was unaffected by the failure of the Court to give special request No. 2 (Pawley vs. United States, 47 Fed. (2d) 1024 (C. C. A. 9) and the judgment as to this count is affirmed."

Circuit Court of Appeals Opinion p. 11.

SUMMARY STATEMENT OF THE MATTER INVOLVED.

Petitioner was indicted for alleged false testimony given by him as a witness in civil suits pending in the United States District Court at Memphis, in which he was a defendant, and P. M. Barton et al plaintiffs; also the United States had intervened as plaintiff; and the effort was to discover the proceeds of certain cotton which Defendant, **as a representative of G. H. Britton Cotton Company,** had purchased and resold. **But the Cotton Company received all the proceeds of the sale,** 60 days or so later turning over to defendant in money and bonds some $30,000.00, supposedly of such proceeds. R. pp. 243-244. All of this defendant fully accounted for R. p. 244, but the plaintiffs had the notion that he should likewise account for some $17,000.00 received from another lot of cotton purchased by the defendant for the account of said Cotton Company from Ellis and Edwards, and on which there were no penalties.

See Count 4 of the Indictment. R. pp. 13-15.

Petitioner took the position which he yet holds that **this $17,000.00 was not proceeds of the Barton cotton,** but came from other cotton not involved in the civil suit, as stated, known as the Ellis and Edwards or Leftwich cotton. R. pp. 244-245.

After the $30,000.00 alleged proceeds of Barton cotton were accounted for and turned over to the Clerk of the Court, Petitioner is further plied with questions as to what he had done with this $17,000.00, and it is in that connection that the testimony involved in Count 3 is given. This testimony is as follows, being taken from the indictment, to-wit:

"Q. Mr. Fraser, did you pay off the balance of the indebtedness on your home in 1942?

A. I will answer you this way . . .

Q. Just answer my question.

A. Did we pay it off in 1942?

Q. Did you pay off the balance of the indebtedness on your home in 1942?

A. **I don't know.** I made a trade, and I think these people reduced the indebtedness to around $2,500.00 or $2,600.00. That was made in 1940 or 1941.

Q. Are you sure it wasn't made in 1942?

A. No, 1940 or 1941.

Q. Whom did you make that trade with?

A. Brigance. He was sick, and they didn't have any money.

Q. Where is he?

A. He is dead.

Q. Who have you been paying the money to?

A. Mrs. Brigance.

Q. You haven't paid anything since 1940 or 1941?

A. **I haven't; no."**

Indictment, Count 3, R. pp. 11-12.

The indictment alleges this testimony was false because on or about September 28, 1942, petitioner signed a check which was used to pay off a mortgage indebtedness then existing against his home.

We quote from the Stipulation of Facts used on the trial:

III.

"It is further stipulated and agreed that the said William Fraser and his wife, Katie May Fraser, executed a mortgage deed of trust to Union Planters National Bank & Trust Company, Trustee, dated April 7, 1941, and that the same was filed for record on April 7, 1941, in the Register's Office of Shelby County, Tennessee, where same now appears of record in Book 1707, page 305; and that said mortgage deed of trust was released of record by marginal release dated and filed for record in said Register's office on September 28, 1942, where the same now appears of record, said marginal release being executed by C. A. Tindall as the true and lawful holder of the claim secured by said mortgage deed of trust."

R. p. 49.

We quote from the testimony of petitioner on his trial in this case:

"Q. Count three refers to your being asked about paying a mortgage?

A. Yes, sir.

Q. At the time you made that statement, had you previously had a mortgage, and had you paid it off?

A. Yes, sir.

Q. Is that in the nature of a deed of trust given by yourself and your wife to Stanton Abernathy and E. M. Bell?

A. Yes, sir.

Q. They are named as trustees?

A. Yes, sir. It was purchased from Mr. and Mrs. G. W. Brigance.

Q. Will you please file that deed of trust as an exhibit to your testimony?

A. I do, sir.

(The document referred to was thereupon received in evidence, and Marked Exhibit No. 9—Fraser, and will be found among the exhibits.)

Mr. DRAPER: Are you introducing a 1941 instrument.

MR. DAVIS; I am introducing a deed of trust.

MR. DRAPER: There is no controversy about that, but there is no need for encumbering the record, because this instrument was satisfied in 1941, long before any of these transactions happened. It is a renewal.

MR. DAVIS: The mortgage reflects the fact that it was released and satisfied in full the 7th day of April, 1941.

A. That's right.

Q. That's when it was cancelled?

A. Yes, sir.

Q. Is that the mortgage you were referring to at the time?

A. Yes, sir.

Q. Was there another mortgage on the property at the time you were talking about that?

A. Yes, sir.

Q. What was that for, and did you recall it at that time?

A. **I did not.** Mr. Farrar was questioning me, and I told him **that I didn't know,** that my recollection had been ordinarily good heretofore, but that if he wanted it, **I would go back home and get the mortgage, if it existed, and bring it to him.**

Q. **You told him you had to refer to your records?**

A. **Yes, sir.**

Q. Mr. Fraser, did you intend, by that statement, to mislead anyone about that mortgage proposition?

A. No sir, I did not. I believe I have a little more gumption than to try to do anything like that.

R. pp. 241-243.

Cross-ex.

Q. With respect to your paying off the mortgage on your house, you did, did you not, on the 28th day of September, 1942, personally go to the Bank of Commerce and issue a check in the sum of $3,175.55?

A. I don't think I went to the Bank of Commerce.

Q. Did you issue a check on your account at the National Bank of Commerce on the 28th day of September, 1942, on which a cashier's check was issued, and which cashier's check in the sum of $3,175.55 was turned over to the account of C. A. Tindall in satisfaction of the balance due on your home out there where you now live?

A. I saw the check, and I know it is true that I did give a check. **At the time I gave the check, I had no knowledge of it.**

Q. Had what?

A. **No knowledge.**

Q. You mean you were unconscious?

A. **I don't know whether I was or not, but I went to the hospital two days afterward, bleeding badly, and I don't recall that check**, but it is a fact that I did pay off mortgage on my home at that time.

Q. And you paid it out of the money you received in the transactions about which you testified?

A. That's right.

Q. That is, you paid it out of the money you received in your transactions with Barton, that is, either directly with the Barton money, or money that came from the sale of the Leftwich cotton?

A. It wasn't Barton money; proceeds of the Leftwich transaction."

R. pp. 260-261.

The only other testimony in the record about the matter, is that given by J. D. Stovall, and W. G. Pegg, government witnesses, and a digest of their testimony will be adequate.

J. D. Stovall. R. pp. 92-100.

He was assistant cashier of National Bank of Commerce, Memphis, and brought records and testified therefrom, that on Sept. 28, 1942, a check on the account of William Fraser for $3,175.55, purchased a cashier's check on said bank, for said amount, which was payable to the First National Bank of Memphis, and records of Mr. Fraser's account reflected this fact. The cashier's check bore the endorsement, to-wit:

"Cashier's check issued to C. A. Tindall", O. Ked by one of the clerks at the First National Bank.

W. G. Pegg, R. pp. 101-103

He was auditor of First National Bank of Memphis, and brought records and showed that cashier's check issued by National Bank of Commerce, Memphis, Sept. 28, 1942,

for $3,175.55 was used to purchase a cashier's check for said amount on the First National Bank of Memphis, and that same was deposited to the account of C. A. Tindall in that bank on Oct. 1, 1942.

JURISDICTION OF THIS COURT.

Jurisdiction of this Court is based on Section 240 (a) of the Judicial Code (28 USCA. 347 (a)), as amended.

SPECIFICATION OF ERRORS

Your Petitioner respectfully submits that the Circuit Court of Appeals was in error in the following respects:

I.

The Court erred in holding that the error on the part of the District Court in refusing special request No. 2, for instruction to the jury, was not prejudicial, so as to require reversal on Count 3 of the Indictment, and in affirming Count 3.

Special Request No. 2. R. p. 459.

Motion for New Trial embodying same. R. p. 26.

Opinion Circuit Court of Appeals, p. 7, R. p. 476.

This was error because:

The testimony made the basis of Count 3 did not negate the existence of the payment in 1942 of a mortgage indebtedness on the home, but only the witness' awareness of the fact at the time of his testimony. The evidence summed up by the learned Circuit Court of Appeals as estab-

lishing the fact of payment made in 1942 does not make issue with nor disprove the testimony set out in the indictment, nor does it establish any intent to falsify, and such evidence is no substitute for a proper instruction to the Jury, whose function it was, under proper instruction, to determine the real issue, to-wit: Was petitioner aware, at the time of testifying, of the fact that he had paid off a mortgage on his home in 1942, and designedly concealed or misrepresented this fact?

Or stated differently, the learned Court of Appeals erred in holding that the testimony relating to this Court was sufficient as a matter of law to sustain the indictment, or excuse the giving of this proper instruction.

II.

The Court erred in holding that plaintiff had any right to inquire as to the Ellis & Edwards, or Leftwich Cotton. That is, that this evidence was material to any issue in the civil cause. Because, these transactions were not had with the plaintiffs in the civil cause, nor is it claimed that any penalties were due thereon.

REASONS RELIED UPON FOR REQUEST TO GRANT THE WRIT.

It is submitted that the Court should entertain jurisdiction and grant the Writ for the following reasons:

I

The theory of the Indictment, Count 3, is that Petitioner testified that he did not pay off a mortgage on his home in 1942, whereas it is a fact that he did pay off

a mortgage in 1942. The testimony set out in the Indictment does not bear out this theory; the gist of it is that the witness said **he did not know** whether he had paid off a mortgage in 1942.

II.

The facts are that Petitioner and his wife had purchased their home from Brigance, in her name, and had executed a mortgage for balance of purchase price. This mortgage he satisfied or paid off in 1941.

See Exhibit 9—Fraser.
Testimony, Fraser, R. pp. 241-243.

In the testimony assigned as perjury in the Indictment, the witness only undertakes an historical account of the matter from the time of the purchase from Brigance, and his answers pertain to this mortgage, supra. The concluding answer to "Q. You haven't paid anything since 1940 or 1941? A. **I haven't**, no", has reference to the Brigance mortgage, and was in reality and so intended by the witness as a statement to the effect, that the witness had not personally made such a payment, but his wife attended to this if it had been done. This is made clear by what preceded and followed the excerpt adopted as the basis of the Indictment.

Further, as shown in Petitioner's testimony on his trial (supra) he explained to the questioning attorney that he didn't know, as to the later mortgage, but offered to go home and get his records, that is, ascertain the facts for him. R. p. 243.

III.

Petitioner was a sick man at the time of testifying,

suffering from Uremic poisoning, which affects the mind, particularly as to memory.

Testimony Dr. Ragsdale, R. pp. 328-331.
He was then 67 years old. R. p. 220.

IV.

Petitioner's testimony that he, at the time of testifying on the matters set out in the indictment, did not recall to memory the later mortgage, and its payment in 1942, has the utmost of plausibility. It is unrefuted in the record.

V.

The mere fact that the conceded fact of the existence of the later mortgage and its payment in 1942, is established by documentary evidence, is not a substitute for a proper charge to the jury as requested in Request No. 2, because it does not join a direct issue with the testimony assigned as perjury.

VI.

This Court granted certiorari in Goins vs. U. S., and, after argument, denied it, on the ground that the failure to give the instruction was not prejudicial. But the distinction is that Goins testified positively that he and his wife had not made a trip to Chicago with Millhorn in January, 1937, denying that he had ever been to Chicago. The Government had Millhorn as a witness, and also the registry clerk at the hotel where Goins stopped, and the registration card signed by Goins.

Had Goins testified that he did not know, or did not recall being in Chicago, the case would have some similarity to the instant case, and, we have no doubt, this

Court would have sustained the certiorari, and reversed.

Goins vs. U. S., 306 U. S. 623
Facts in 99 Fed. (2d) 147.

WHEREFORE, your Petitioner prays that a Writ of Certiorari issue out of and under the seal of this Court to the Honorable Circuit Court of Appeals for the Sixth Circuit, commanding said Court to certify and file in this Court on a day certain, to be designated, a certified transcript of the case there entitled William Fraser, Appellant vs. United States of America, No. 9679, to the end that said case may be reviewed and determined by this Court and that Petitioner may have such relief as this Court may deem proper and just, and that the Opinion and Judgment of the said Circuit Court of Appeals and the District Court may be reversed and corrected.

WILS DAVIS
Memphis, Tennessee
Attorney for Defendant.

W. H. FISHER,
W. C. RODGERS
Memphis, Tennessee
Of Counsel.

BRIEF AND ARGUMENT

ASSIGNMENT OF ERROR NO. I

REFUSAL TO GIVE PROPER SPECIAL INSTRUCTION.

> "The learned Court of Appeals erred in holding that the testimony relating to this Count was sufficient as a matter of law to sustain the indictment, or excuse the giving of this proper instruction."

As stated by the learned Circuit Court of Appeals:

> "The main question here is, whether Appellant's Motion for a directed verdict should have been granted."
>
> Circuit Court of Appeals Opinion, p. 7, R. p. 475

This proposition covers both the errors assigned in Appellant's Petition herein, in their final analyses.

The first one of which, supra, as to whether or not the judgment of the District Court should be reversed because of its failure to give the special request refused, is resolved against the Defendant on the grounds that the testimony of the witnesses Stovall and Pegg contributed the supporting or "substantial evidence", when taken in conjunction with Defendant's admission that he had signed the check which was used to pay off a mortgage indebtedness in 1942, contrary to his answer to the question: "Haven't you paid anything since 1940 or 1941? A. I haven't, no". R. p. 12.

But the deficiency here and which existed, of course, upon the request for directed verdict is, that there is no testimony to establish the facts:

(a) That defendant then knew or remembered his having signed a check for this purpose. R. p. 243.

The facts as to this being: that Defendant was then very sick, having gone to the hospital two days later in serious condition. R. p. 261. The sum total of his testimony, and that which accompanied that complained of, being that matters pertaining to the home were left to the attention of his wife, in whose name the title stood, and that he personally had not gone to the bank and attended to this matter, but had signed this check without any recollection thereof, as he puts it, without any "knowledge" of having done so. R. p. 261. Neither of these bankers say that he appeared in person or attended to this transaction in any manner, but the record discloses that he had undergone a very serious operation shortly before this time and had not been, and was not then, in any condition to transact business. R. pp. 229 to 231.

Besides, the very manner in which this transaction was handled is indicative of an inexperienced person's acts. Please note that Defendant's check was not payable to the holder of the indebtedness, in the first place; secondly, it was used to purchase a cashier's check payable to another bank, The First National (R. p. 93), not to the holder of the indebtedness, C. A. Tindall, this being done apparently by reason of the fact that the person effecting this transaction had in all probability been dealing with the First National Bank, no doubt paying the monthly notes thereat, and for this reason, when the first cashier's check was sought for the purpose of paying off the entire indebtedness, the person handling this assumed it was held or in the hands of the First National Bank, and when it was discovered that this was not the

case, the First National Bank issued its cashier's check in exchange for that of the National Bank of Commerce, payable to its order, to the holder of said indebtedness, C. A. Tindall. R. p. 101.

All these things indicate that a novice was handling the transaction. The natural, and no doubt the proper inference to be drawn from these circumstances is that Mrs. Fraser, fearing the death of Mr. Fraser, as shown by the record (R. p. 232) and recognizing the necessity of his return to the hospital in the next day or two (R. p. 230), was seeking to clear the home as a conceived protection against this eventuality.

Further, and the next deficiency in this particular is (b), there is nothing in the testimony of these two bankers to supply the essential element of an intent or purpose to mislead or deceive. And there is no other evidence in the Record to this effect.

Finally (c), this testimony supplies or adds nothing to Defendant's concession, made after he had time to go home and examine his records, including this check, as he offered and requested to do on the occasion of the giving of the answer (supra) complained of (R. p. 243), that he signed the check used to pay this mortgage, but obviously when he was too sick to appreciate or be impressed with his act in so doing. R. p. 261.

In other words, they contribute nor furnish any fact or circumstance not already conceded, and fully explained by Defendant (R. p. 243), nor do they contradict or refute any statement made by him.

Therefore, the learned Appellate Court's conclusion

that the error of the District Court in refusing this instruction was harmless or excused, as a matter of law, because there were two witnesses, Stovall and Pegg, who supplied the necessary corroborating facts or circumstances, is clearly without justification.

When we add to this fact, that Defendant's first answer to the question:

> "Did you pay off the balance of your indebtedness in 1942?" (Recited as a part of Count 3.)

was

> **"I don't know."** R. p. 12.

showing conclusively that he was uncertain and was not pretending to give full and definite information as to the disposition of the funds being inquired about (that derived from the sale of the Ellis-Edwards cotton to Leftwich)—it is not perceived how the Trial Court, or the Honorable Court of Appeals, determined, as a matter of law, that he was not entitled on this Count to a directed verdict.

This difficulty increases when we consider the further facts exhibited by the Record herein, that the Defendant had repeatedly stated that he was unable to give a detailed accounting of these funds, from memory, or recall all of the dispositions made thereof, with accuracy, and that he was not attempting to do so. For instance:

> "The Court: What else, now?
>
> A. Judge, I don't know. I can't answer that. I am trying to dig back and find out.
>
> * * *
>
> The Court: What else did you pay?

A. I am perfectly willing to answer if I can."

R. p. 248.

"* * *

The Court: And you haven't paid any other bills?

A. Yes, sir, but I don't know what they are.

The Court: They would be minor bills?

A. Some of them were, and some were not."

R. pp. 250 and 251.

Hence, we agree with the learned Court of Appeals, that:

> "The main question here is whether Appellant's Motion for a directed verdict should have been granted."

And most sincerely urge that the District Court should have granted, and the Appellate Court reversed for failure to do so, Defendant's request for a directed verdict. R. pp. 213 and 337. As well as for the Trial Court's refusal to give the special instruction submitted. R. p. 459.

ASSIGNMENT OF ERROR NO. II.

MATERIALITY OF EVIDENCE.

This proposition presents the question as to whether or not the evidence on which this Count 3 is based, was material to any proper or legitimate issue involved in the civil litigation.

The learned Court of Appeals has accepted Defendant's contention in this particular as pointed out supra, in this language:

> "Appellant insists 'it wasn't Barton money, and the statement, although misleading, **was literally true, and the Government's evidence does not place the transaction in a different light.**"

Court of Appeals Opinion p. 10. R. p. 478.

But takes the benefit of this concession away from Defendant by further holding, to the effect:

> **"The main issue was whether the sales agreement between Barton and his associates and the Fraser-Britton associates was a contract for the sale of the cotton by the Defendants as Barton's agents, or whether it was an outright sale to them. Appellant's testimony as to his disposition of the money relates to the nature of the contract if he treated the money received as his own, that fact would have some tendency to support his understanding of the contract. We think that the testimony alleged in Counts 1 and 3 given by Appellant was material within the meaning of the statute and the law as above indicated, and that it was not error to so hold."**

Court of Appeals Opinion, p. 7. R. pp. 474-475.

Most respectfully we say, that this learned Court's premises in this paragraph are clearly erroneous.

First, there was no controversy or issue to the effect that Defendants Fraser and Britton were in any manner the agents of Barton or his associates. On the contrary it was expressly conceded that the transactions between Barton and his principal, the Three Way Land Company, or associates, and the G. H. Britton Cotton Company, were outright sales. R. pp. 221, 226 and 227.

In the second place, the very inquiry on which the indictment was based shows beyond any peradventure of a doubt that the Defendant was treating the proceeds of the Ellis-Edwards or Leftwich cotton as his own, having admitted or shown that he was using same to pay his private and personal obligations. This is the very es-

sence of the questions propounded to him, and his answers thereto, and is not disputed or denied by any witness in the record.

It is likewise completely disclosed by the Record that this cotton was purchased and paid for by the G. H. Britton Cotton Company, all the checks having been signed by Mr. G. H. Britton (R. p. 161), and the warehouse receipts covering this cotton some months later turned over to this Defendant by Mr. G. H. Britton, himself, after which same was sold and the proceeds appropriated and used by Mr. Fraser as his own, as aforesaid, about which there is no dispute.

There is no claim or effort sought in the original complaints to reach this particular cotton, as either Ellis-Edwards cotton or Leftwich cotton, or the proceeds thereof. These are not mentioned in either the original complaints, amendments thereto, the intervening petition or amendments thereto. R. pp. 338 to 362. And, for this reason, it is difficult to see how this matter outside of these pleadings could really become material.

However, frankness requires that we acquaint the Court with the theory on which this contention is made, which is, that Britton used some of the proceeds of the Barton cotton with which to purchase this particular lot (R. pp. 149, 160 and 161) and as a consequence, or in effect now, because of Britton's conversion or misappropriation of these proceeds, Fraser should be sent to the penitentiary for Britton's derelictions in this particular, by reason of the fact that some months later Britton delivered the warehouse receipts covering this cotton to Fraser, who sold it and appropriated the proceeds. R. pp. 244, 249, 250, 148, 150, 158, 160 and 161.

Yet, there is no effort nor prayer in either of the complaints to impress this particular cotton or the proceeds thereof with any lien or recover it for the use and benefit of the original Plaintiffs or Intervenor, the United States of America. It is believed, and confidently urged, that this conversion, and the consequences thereof cannot be visited upon Fraser, and certainly ought not to be used as the basis of sending him to the penitentiary, simply because he was unable to account accurately and remember in detail every disposition thereof.

Under no circumstances can it be material to any issue made in the original Complaint or the intervening Petition. These transactions simply made Britton liable for his conversion. It may be, that under a proper proceeding, and proper facts and circumstances, these funds could be traced and a lien sought and impressed thereon, but the civil proceedings were not of that nature, nor sought any such specific relief. R. pp. 338 to 362.

Hence, this inquiry was wholly foreign to any issue raised thereby.

Seasonable objections were made to any inquiry regarding the handling of the Ellis-Edwards or Leftwich cotton, or the proceeds thereof:

> "MR. RODGERS: We want to object to any testimony with reference to 291 bales of cotton, and particularly to Mr. Leftwich's handling the sale of same, on the ground that this information, or any information pertaining to the handling of this 291 bales of cotton is wholly foreign to any issue in this lawsuit; and it is immaterial and irrelevant as to any issue in this case, and we want to object to any and all testimony regarding this 291 bales of cotton."

"MR. RODGERS: I object to any inquiries with reference to whom this cotton was sold by Mr. Fraser or the Britton Cotton Company, or any amounts obtained for the cotton by either, on the ground that it is wholly irrelevant, immaterial and incompetent. The Government is not concerned and cannot be concerned about any sale of cotton for (from) the first buyer, G. H. Britton Cotton Company, or William Fraser, and has no right to inquire into any sale made of this cotton by any other person after it was first sold to William Fraser or the G. H. Britton Cotton Company."

R. p. 254.

Also R. pp. 18, 21, 213, 214 and 337.

These objections should have been sustained.

Thompson vs Bowie, 71 U. S., 463, 18 L. E. 424.

Wherefore, it is respectfully submitted that the Honorable Court of Appeals, and the District Court, erred in holding this inquiry material to the issues raised by the complaints in the civil causes.

Hence, for the reasons assigned, Defendant prays that this Honorable Court will grant the Writ of Certiorari heretofore prayed and will reverse the Opinion and Judgment of the Honorable Court of Appeals and discharge this Defendant.

Respectfully submitted,

W. H. FISHER,
W. C. RODGERS,
Memphis, Tennesse
Of Counsel.

WILS DAVIS
Memphis, Tennessee.
Attorney for Petitioner.

Received of Wils Davis, Attorney for Defendant, William Fraser, one copy of the Record and three copies of the Petition for Certiorari, and Brief and Argument in support thereof, with notice of its filing, this ..... day of November, 1944.
